Office of Chief Counsel Internal Revenue Service

memorandum
CC: LM: POSTF-113213-02

date: 3/12/02
to: Team Coordinator

from: Associate Area Counsel, LM:

subject: Agent for

. Audit

U.I.L. Nos. 1502.75-11 and 1502.77-00

This is in reply to your request for assistance dated February 27, 2002. The advice rendered, however, is conditioned on the accuracy of the facts provided by you.

This memorandum should not be cited as precedent. It is also subject to 10-day post review in the National Office and, therefore, may be modified.

ISSUE

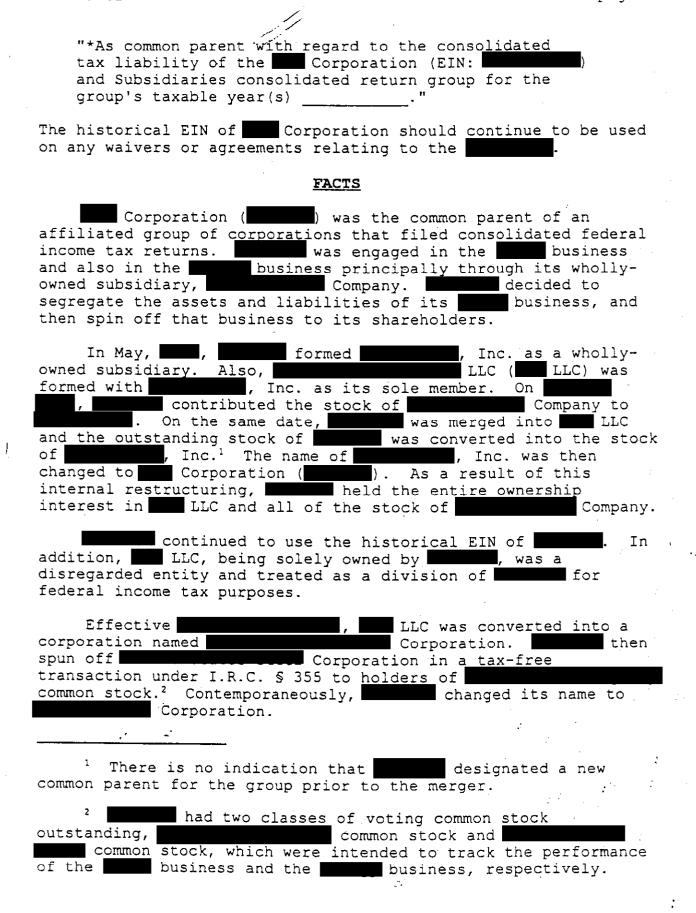
Who can act as common agent for the consolidated group following an internal reorganization and the spin-off of certain subsidiaries?

CONCLUSION

Corporation is the new common parent and agent for the affiliated group following the internal reorganization and spin-off of certain subsidiaries. As agent for the Corporation can sign both forms 870 and 872 and receive tax refunds.

For the sake of clarity, we recommend that, when dealing with Corporation as agent for the Corporation, the corporation be referred to as Corporation, formerly known as Corporation and prior thereto as Inc."

The foregoing name should be asterisked and at the bottom of form 872, in particular, the following language should be inserted after the asterisk:



LAW AND ANALYSIS

I.R.C. § 1501 grants an affiliated group of corporations the privilege of filing a return on a consolidated basis. If a consolidated return is filed, the members of the group consent to be bound by the legislative regulations promulgated pursuant to the authority in I.R.C. § 1502. Thus, by filing consolidated returns, the consented to be bound by the § 1502 regulations.

A central feature of the consolidated return regulations is the role of the common parent as the exclusive agent for the consolidated group with respect to all procedural matters. Treas. Reg. § 1.1502-77(a). The common parent in its name will give waivers, give bonds, and execute closing agreements and all other documents, and any document so given or executed will be considered as having also been given or executed by each subsidiary. The common parent also files claims for refund or credit, and any refund is to be made directly to and in the name of the common parent and will discharge any liability of the Government in respect thereof to any subsidiary.

Treas. Reg. § 1.1502-77(a) further provides that the common parent remains the agent for the members of the group for all years during which it was the common parent, whether or not consolidated returns are filed in subsequent years and whether or not one or more subsidiaries have become or have ceased to be members of the group. As a corollary, the common parent continues to act as agent for any subsidiary which has ceased to be member of the consolidated group for all years in which such subsidiary was a group member. Craigie, Inc. v. Commissioner, 84 T.C. 466 (1985).

Thus, in the instant case, the remained in existence following the merger of Old into LLC, and New (as was renamed) became the new common parent for the group. New was the highest-tier, includible corporation in the remaining chain. It was also a member of the group prior to Old merging into LLC, being formed in May, two months before the merger. As the new common parent, New was authorized to act as agent for the continuing with respect to both pre- and post-merger consolidated years. See, Southern Pacific v. Commissioner, supra., where, in a "reverse acquisition", a common parent dissolved after transferring its assets to a newly-formed subsidiary of a new holding company, and the Tax Court held the new holding company was the new common parent for both pre- and post-acquisition years.

As the facts indicate, New was later renamed Corporation contemporaneous with the spinoff of Corporation. The mere renaming of New to Corporation (as well as the earlier renaming of to New did not affect status as the common parent and agent for the continuing See, Treas. Reg. § 1.1502-75(d)(2)(i). Similarly, the spin off of Corporation (and its subsidiaries) did not terminate sagency status for the See, Treas. Reg. § 1.1502-77(a) provides that the common parent remains the agent for the consolidated group even though one or more subsidiaries ceased to be members of the group.

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney-client privilege.

If disclosure becomes necessary, please contact this office for our views. If you have any questions, please call Attorney

Associate Area Counsel (LMSB)

By:

Senior Attorney (LMSB)